

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Permit 18997 (Application 26322)

Robert L. Okin

ORDER DENYING PETITION FOR EXTENSION OF TIME

SOURCE: Unnamed Stream tributary to Maxwell Creek thence Pope Creek thence Putah Creek
COUNTY: Napa

WHEREAS:

You are hereby notified, pursuant to section 1410 et seq. of the California Water Code, that the State Water Resources Control Board (SWRCB) will deny the petition for extension of time for Permit 18997 because:

- 1) The Permittee has failed to use beneficially part of the water for the purpose for which it was appropriated for an extended period of time, in violation of Water Code sections 1390 and 1241.
- 2) The Permittee did not submit information requested by the Division of Water Rights (Division) needed to process a Petition for Extension of Time.

The facts and information upon which the proposed denial of the extension of time is based are as follows:

A. Permittee Has Not Appropriated Water Under Permit 18997 Within The Terms Of The Permit

1. Permit 18997 was issued to J. Brad Lampley on September 26, 1983. Permit 18997 authorizes collection of 20 acre-feet (af) of water to storage from November 1 of each year to April 1 of the succeeding year. The time to complete construction ended on December 31, 1986. The time to complete full beneficial use ended on December 1, 1987.
2. Permittee has developed a reservoir with an estimated capacity of 16 af (License Inspection Report dated February 12, 1990) and later enlarged to 18 af (February 28, 1997 Petition for Extension of Time).
3. A Time Extension Order was issued May 8, 1990, extending the time to complete construction to December 31, 1990 and the time to complete full beneficial use to December 31, 1991.
4. Permittee filed a Petition for Extension of Time on March 31, 1997.
5. Permit 18997 was re-assigned to Robert L. Okin on May 29, 2001.

6. Napa County is the lead agency for preparing the California Environmental Quality Act (CEQA) document. The Division requested that the Permittee submit a timeline for preparing the CEQA document by letter dated January 27, 2003. The Permittee did not submit the requested information.
7. Permittee was requested to submit an acceptable work plan by letter dated July 28, 2004, for proceeding with (1) an Initial Study, (2) the biological, archeological, and botanical studies for inclusion in the CEQA document, (3) the date an application to appropriate water for the vineyard project was submitted (Permit 18997 cannot provide an adequate water supply for the 100-acre vineyard project), (4) the projected date when a draft CEQA document will be available for review, and the projected date when a final CEQA document will be prepared. This information was requested pursuant to Water Code section 1701.3. The Permittee was advised that the Petition for Extension of Time is subject to cancellation if the requested information is not timely submitted, pursuant to Water Code section 1701.4.
8. Permittee did not provide the information requested in the Division's July 28, 2004 letter.
9. In 1990, the Solano Agencies (Solano County Water Agency, et al.) filed a complaint in the Sacramento County Superior Court for the adjudication of all water rights in the upper Putah Creek watershed. Negotiations between the Solano Agencies, U.S. Bureau of Reclamation and Upper Putah Creek water users (including the permittee) resulted in the March 10, 1995 Condition 12 Settlement Agreement, which was approved by the Court on March 1, 1996. On February 27, 1996, the SWRCB issued Order WR 96-002 modifying the conditions of permits and licenses subject to the Settlement Agreement.

The Settlement Agreement establishes a limited quantity of water that can be used by the upper Putah Creek water users. Once the limited supply is exhausted, no further appropriative water rights can be issued in the upper Putah Creek watershed in Napa and Lake Counties. If existing permittees and licensees do not maintain their water rights, the unappropriated water is re-assigned to the reservation of water for that county by the Watermaster and becomes available for new users.

10. Any uncertainties regarding the impacts of the adjudication litigation on Permit 18997 were resolved in 1996, with the Court's approval of the Settlement Agreement and issuance of Order WR 96-002.
11. By letter dated July 9, 2001, the Division informed all persons seeking time extensions in the upper Putah Creek watershed that we are evaluating whether projects have been timely developed under existing permits. To ensure that due diligence is being exercised by existing permittees, and provide opportunity to review these water rights on a periodic basis, we intend to limit any time extensions to five years. Any objections to limiting time extensions to five years should be submitted to the Division within 30 days to be considered. Permittee did not submit an objection. Therefore, any time extension would only extend the time for full beneficial use of water under Permit 18997 from December 31, 1994 to December 31, 1999.

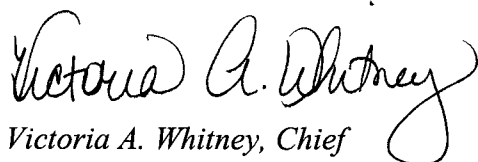
The July 9 letter states that time extensions will only be granted to those persons who qualify, based on meeting the requirements of Title 23, California Code of Regulations, section 844. We will evaluate each filing separately, and contact those petitioners who have not met the requirements for time extension to inform them of how we intend to proceed regarding their permits.

B. By Failing To Use All or Part Of The Water For An Extended Period, Permittee Has Failed to Apply the Water Authorized by Permit 18997 to Beneficial Use in Accordance With The Water Code

1. Permit 18997 was issued and Permittee took the permit subject to section 1390 of the Water Code, which states: "A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity of this division (of the Water Code), but no longer."
2. Section 1241 of the Water Code provides: "When a person entitled to the use of water fails to use beneficially all or any part of the water claimed by him, for which a right has vested, for the purpose for which it was appropriated or adjudicated, for a period of five years, such unused water may revert to the public and shall, if reverted, be regarded as unappropriated public water."
3. Permittee is unable to enlarge the reservoir from 18 to 20 af because the Permittee has not completed an acceptable CEQA document covering the enlarged reservoir and proposed larger, new vineyard development and related Napa county approvals.
4. Permittee submitted a Petition for Extension of Time, but has not submitted requested documentation to show due diligence in developing the remaining storage capacity pursuant to Permit 18997.

C. Based on the Above Facts, the Petition for Extension of Time is Hereby Denied.

STATE WATER RESOURCES CONTROL BOARD



*Victoria A. Whitney, Chief
Division of Water Rights*

Dated: **AUG 18 2005**

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

APPLICATION 26322 PERMIT 18997 LICENSE

ORDER APPROVING A NEW DEVELOPMENT SCHEDULE

WHEREAS:

1. Permit 18997 was issued to J. Brad Lampley on September 26, 1983 pursuant to Application 26322.
2. A petition for an extension of time within which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board (Board).
3. The permittee has proceeded with diligence and good cause has been shown for said extension of time.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Condition 7 of the permit be amended to read:

CONSTRUCTION WORK SHALL BE
COMPLETED ON OR BEFORE

December 31, 1994

(0000008)

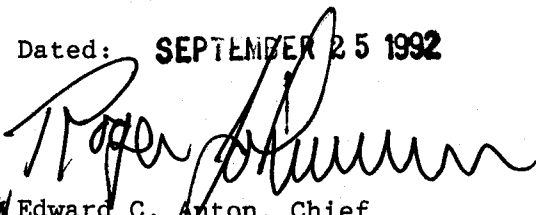
2. Condition 8 of the permit be amended to read:

COMPLETE APPLICATION OF THE
WATER TO THE PROPOSED USE
SHALL BE MADE ON OR BEFORE

December 31, 1996

(0000009)

Dated: **SEPTEMBER 25 1992**


for Edward C. Anton, Chief
Division of Water Rights

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

APPLICATION 26322 PERMIT 18997 LICENSE

ORDER APPROVING A NEW DEVELOPMENT SCHEDULE,
AND AMENDING THE PERMIT

WHEREAS:

1. Permit 18997 was issued to J. Brad Lampley on September 9, 1983 pursuant to Application 26322.
2. A petition for an extension of time within which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board.
3. The permittee has proceeded with diligence and good cause has been shown for the extension of time.
4. Permit Condition 11 pertaining to the continuing authority of the Board should be updated to conform to Standard Permit Term 12 as contained in Section 780(a), Title 23 of the California Code of Regulations.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Condition 7 of the permit be amended to read:

CONSTRUCTION WORK SHALL BE
COMPLETED ON OR BEFORE

December 31, 1990 (0000008)

2. Condition 8 of the permit be amended to read:

COMPLETE APPLICATION OF THE
WATER TO THE PROPOSED USE
SHALL BE MADE ON OR BEFORE

December 31, 1991 (0000009)

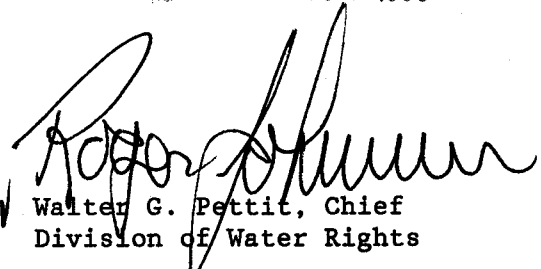
3. Condition 11 of this permit be amended to read:

Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust. (0000012)

Dated: MAY 08 1990


Walter G. Pettit, Chief
Division of Water Rights

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 18997

Application 26322 of J. Brad Lampley

1855 Main Street, St. Helena, California 94574

filed on May 7, 1980, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Unnamed Stream

Tributary to:

Maxwell Creek thence

Pope Creek thence

Putah Creek thence

Yolo Bypass

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Town- ship	Range	Base and Meridian
South 450 feet and West 400 feet from NE corner of Section 10	NE¼ of NE¼	10	8N	5W	MD

County of Napa

3. Purpose of use:	4. Place of use:	Section	Town- ship	Range	Base and Meridian	Acres
Fire Protection						
Recreational						
Stockwatering	Unnamed Reservoir in NE¼ of NE¼	10	8N	5W	MD	
Frost Protection						
Irrigation	S½	3	8N	5W	MD	
	N½	10	8N	5W	MD	
	NW¼	11	8N	5W	MD	
					Total	52

The place of use is shown on map filed with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 20 acre-feet per annum to be collected from November 1 of each year to April 30 of the succeeding year.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose. (000005)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants. (000006)

7. Construction work shall be completed by December 1, 1986. (000008)

8. Complete application of the water to the authorized use shall be made by December 1, 1987. (000009)

9. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued. (000010)

10. Permittee shall allow representatives of the State Water Resources Control Board and other parties as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit. (000011)

11. Pursuant to California Water Code Sections 100 and 275, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation. (000012)

12. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges. (000013)

13. The State Water Resources Control Board reserves jurisdiction over this permit to impose any appropriate conditions at some future date to conform the permit to Board policy on use of water for frost protection. Action by the Board will be taken only after notice to interested parties and opportunity for hearing. (000020)

14. Permittee shall install and maintain an outlet pipe of adequate capacity in his dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board in order that water entering the reservoir which is not authorized for appropriation under this permit may be released. Before construction permittee shall submit plans and specifications of the outlet pipe to the Chief of the Division of Water Rights for approval. Before storing water in the reservoir permittee shall furnish evidence which substantiates that an outlet has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer. (0050043)

15. Permittee shall install and maintain in his reservoir a staff gage meeting the approval of the State Water Resources Control Board for the purpose of determining water levels in the reservoir. The permittee shall inform the State Water Resources Control Board when his reservoir first reaches its specified capacity each year, and report the reservoir level on April 1 and April 30 of each year. (0070047)
(0100047)

16. Permittee is hereby put on notice that there may be years when water collected to storage under this permit will not be within the reservation of water established for the watershed upstream from Lake Berryessa in Decision 869. During such years, unless replacement water is provided on an exchange basis, permittee shall release water collected to storage under this permit during the preceding collection season at the maximum practical rate to flow into Lake Berryessa. (0220086)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: SEPTEMBER 26 1983

STATE WATER RESOURCES CONTROL BOARD

Raymond Walsh

Chief, Division of Water Rights